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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/185,360 11/03/98 VACANTI

J MIT-6917(CMC)

EXAMINER

TM02/0214

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ISABELLA, D.

ART UNIT

PAPER NUMBER

2164

DATE MAILED:

02/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/185,360

Applicant(s)
VACANTI ET AL

Examiner
ISABELLA, DAVID J.

Group Art Unit
2164



☒ Responsive to communication(s) filed on Nov 1, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 6-12 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 6-12 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The Letter of Abandonment mailed on 11/7/00 is premature. Applicant filed an amendment along with three-month extension of time on 11/6/00. The amendment included a certificate of mailing which established that the amendment was timely filed. Therefore the abandonment is vacated.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sparks'791 in view of any of Brendel, et al'299, Brekke, et al '608 and Orton and alternatively, any of Brendel, et al'299, Brekke, et al'608 and Orton in view of Sparks'791.

Sparks teaches a method for growing tissue graft in a patient's own body. The device and method of Sparks utilizes non-resorbable materials. It should be noted that Sparks was filed in 1967 back when very little resorbable materials were used in tissue applications. Currently, resorbable materials are widely used and employed in tissue reconstruction as shown by any of Brendel, et al, Brekke, et al and Orton. To replace the non-resorbable material of Sparks with current resorbable matrixes as taught by Brendel, et al, Brekke, et al and Orton for better tissue

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response and compatibility would have been obvious to one with ordinary skill in the art at the time of the invention thereof.

Alternatively, each of Brendel, et al, Brekke, et al and Orton teach the use of resorbable matrices for in vivo culturing of new tissues. Sparks teaches the method for culturing in vivo tissues at one tissue site, removing the matrix after tissue ingrowth has occurred, and then implanting the matrix into a second site. To employ the method of Sparks in the culturing of new autologous tissues specific constructs with the matrices of any of Brendel, et al, Brekke, et al and Orton for better tissue compatibility and response would have been obvious to one with ordinary skill in the art at the time of the invention thereof.

Claims 7,8,9,10,11 and 12 do not distinguish over Sparks, et al as modified by any one of Brendel, et al, Brekke, et al and Orton.

Response to Arguments

3. Applicant's arguments filed 11/6/00 have been fully considered but they are not persuasive.

Applicant's reading of Sparks is incorrect. Sparks does teach the concept for implanting a matrix into one site, removing the matrix after tissue ingrowth has occurred, and then implanting the matrix into a second site. See column 2, lines 1-20. Therefore applicant's arguments with respect to the combining of the references is moot.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Isabella whose telephone number is (703) 308-3060. The Examiner's Supervisor, Corrine McDermott, may be reached at (703) 308-0858. The group receptionist may be reached at (703) 308-0858.

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Should Applicant wish to send a fax for official entry into the file wrapper the Group fax number is (703) 308-3590. Should Applicant wish to send a fax for discussion purposes only, the art unit fax number is (703) 308-2708.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line that curves upwards and then downwards.

DAVID J ISABELLA

PRIMARY EXAMINER

GROUP 3700

dji

January 19, 2001